

NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11	EDUARDO CERVANTES,	)	Case No. CV 12-09889 DDP (MRWx)
12	Plaintiff,	)	
13	v.	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
14	COUNTY OF LOS ANGELES;	)	<b>FOR PARTIAL SUMMARY JUDGMENT</b>
15	DEPUTY PAUL CRUZ #412035	)	
16	individually and as a peace	)	
17	officer; DEPUTY VICTOR	)	
18	CISNEROS #519470	)	
19	individually and as a peace	)	
20	officer,	)	
21	Defendants.	)	[Dkt. NO. 36]
22	_____	)	

Presently before the court is Defendants' Motion for Partial Summary Judgment. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.

**I. Background**

On November 23, 2010 at approximately 1:00 p.m., Plaintiff was seated in his parked vehicle in the parking lot of 8 Ball Billiards in Maywood, California. (Cervantes Dep. at 55:19-56:2, 71:11-72:7; Cruz Dep. at 106:7-8; Surveillance Video at timestamp 00:00-00:01.)

1 Los Angeles County Sheriff's Deputies Paolo Cruz and Victor  
2 Cisneros (collectively, "the Deputy Defendants") were on patrol in  
3 a marked vehicle. (Cisneros Dep. At 95:22-96:5; Cisneros Dep. at  
4 77:22-25, 84:1-19; Surveillance Video at timestamp 00:00-00:01.)  
5 Defendant Cruz noticed Plaintiff's vehicle had tinted front  
6 windows, and decided to conduct a traffic stop to cite or warn  
7 Plaintiff regarding the tinted windows. (Cruz Dep. at 112:12-  
8 112:19, 115:7-116:13, 116:22-117:14, 194:20-195:18.)

9 Cruz drove the patrol vehicle into the parking lot and stopped  
10 to the side of and behind Plaintiff's vehicle. The Deputy  
11 Defendants exited the patrol car and approached Plaintiff's car.  
12 (Cisneros Dep. at 83:15; Cruz Dep. at 119:6-120:23, 124:20-124:24;  
13 Surveillance Video timestamp 00:25-00:33.) Defendant Cruz  
14 approached the driver's side of the vehicle while Defendant  
15 Cisneros approached the passenger's side. (Cisneros Dep. at 83:19-  
16 84:6; Cruz Dep. at 120:19-120:23, 199:10-199:15.) At some point,  
17 Defendant Cruz ordered Plaintiff to exit the vehicle. (Cervantes  
18 Dep. at 96:13-18; Cruz Dep. at 126:9-130:3.) Plaintiff asked  
19 Defendant Cruz, "What is your PC?" (Cervantes Dep. at 96:21-97:1;  
20 Cisneros Dep. at 87:13-22; Cruz Dep. at 126:9-130:3.) Cruz then  
21 again commanded Plaintiff to get out of the car.<sup>1</sup> (Cervantes Dep.  
22 at 98:13-15.) Plaintiff exited the vehicle and Defendant Cruz  
23 ordered Plaintiff to face the vehicle. (Cervantes Dep. at 83:15-  
24 83:20; Cruz Dep. at 119:6-120:23, 124:20-124:24; Surveillance Video  
25 timestamp 00:25-00:33.)

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27 <sup>1</sup> In his deposition, Defendant Cruz stated that he initially  
28 asked for Plaintiff's name and identification, and only ordered  
Plaintiff out of the vehicle once. (Cruz Dep.126:3-130:3.)

1 At this point, the parties' versions of the facts diverge  
2 significantly. Plaintiff contends that he was asked to place his  
3 hands behind his back, and that when he complied, Defendant  
4 Cisneros punched Plaintiff in the right side of the face with a  
5 closed fist. (Cervantes Decl. ¶ 4.) Plaintiff was then taken down  
6 to the ground backwards, causing him to hit his head and suffer a  
7 wound. (Cervantes Decl. ¶ 5.) Defendants then turned Plaintiff  
8 onto his stomach and handcuffed him. (Cervantes Dep. 109:2-10; 16-  
9 18.)

10 Defendants contend that when Defendant Cisneros attempted to  
11 pat-down Plaintiff for weapons, Plaintiff physically resisted.  
12 Only then did the Deputy Defendants take Plaintiff down to the  
13 ground, knees and stomach first. (Cisneros Dep. 135:21-136:15.)  
14 Defendant Cisneros then turned Plaintiff onto his side to complete  
15 the pat-down search. (Cisneros Dep. 136:21-141:5.) During the  
16 pat-down search, Plaintiff told Defendant Cisneros he was going to  
17 spit on him. (Cis Dep. 142:4-9; Cruz Dep. 163:11-22.) Defendant  
18 Cisneros then punched Plaintiff once on the right side of the face.  
19 (Cisneros Dep. 142:8-19.)

20 Once handcuffed, Plaintiff was placed in the back of the  
21 patrol car and arrested for violation of California Penal Code § 69  
22 (resistance by force or violence against an executive officer).  
23 (Cervantes Dep. 109:16-18; Cruz Dep. 101:17-18; 187:18-189:16.)

24 On December 2, 2010, after reviewing Defendant Cruz's and  
25 Defendant Cisneros' incident reports, Deputy District Attorney  
26 Robert Sheldon Nishinaka filed a misdemeanor complaint in Los  
27 Angeles Superior Court charging Plaintiff with a violation of  
28 California Penal Code § 148(a)(1) (resisting, obstructing, or

1 delaying a peace officer). (Nishinaka Deposition at 7:22-10:25,  
2 81:5-82:17; Ex. 1 to Nishinaka Depo.)

3 On November 23, 2011, Plaintiff's criminal case was dismissed  
4 on a motion of the prosecution, pursuant to California Penal Code §  
5 1385.<sup>2</sup> (Certified Criminal Docket LASC No. 0EA11900 at p. 9, Cha  
6 Decl., Ex. C.)

7 On November 19, 2014, Plaintiff filed a Complaint in this  
8 action against the County of Los Angeles and the Deputy Defendants,  
9 alleging five causes of action for civil rights violations.  
10 Defendants now move for summary judgment on Plaintiff's claims  
11 regarding his initial detention and for malicious prosecution  
12 subsequent to his arrest.<sup>3</sup>

## 13 **II. Legal Standard**

14 Summary judgment is appropriate where the pleadings,  
15 depositions, answers to interrogatories, and admissions on file,  
16 together with the affidavits, if any, show "that there is no  
17 genuine dispute as to any material fact and the movant is entitled  
18 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party  
19 seeking summary judgment bears the initial burden of informing the  
20 court of the basis for its motion and of identifying those portions

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21  
22 <sup>2</sup> California Penal Code § 1385(a) states that the judge or  
23 magistrate may dismiss an action on his or her own motion or upon  
24 the application of the prosecuting attorney in furtherance of  
25 justice. The reasons for the dismissal must be set forth in the  
26 minute order. Here, the trial court's minute order states that  
27 "the people announce unable to proceed." (Id.)

28 <sup>3</sup> Defendants also seek summary judgment on Plaintiff's Monell  
claim against the County of Los Angeles. Plaintiff does not oppose  
dismissal of that claim. This parties previously stipulated to the  
dismissal of Plaintiff's Third, Fourth, and Fifth Causes of Action.  
Defendants do not seek summary judgment on Plaintiff's excessive  
force claim.

1 of the pleadings and discovery responses that demonstrate the  
2 absence of a genuine issue of material fact. See Celotex Corp. v.  
3 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from  
4 the evidence must be drawn in favor of the nonmoving party. See  
5 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986).  
6 If the moving party does not bear the burden of proof at trial, it  
7 is entitled to summary judgment if it can demonstrate that "there  
8 is an absence of evidence to support the nonmoving party's case."  
9 Celotex, 477 U.S. at 323.

10       Once the moving party meets its burden, the burden shifts to  
11 the nonmoving party opposing the motion, who must "set forth  
12 specific facts showing that there is a genuine issue for trial."  
13 Anderson, 477 U.S. at 256. Summary judgment is warranted if a  
14 party "fails to make a showing sufficient to establish the  
15 existence of an element essential to that party's case, and on  
16 which that party will bear the burden of proof at trial." Celotex,  
17 477 U.S. at 322. A genuine issue exists if "the evidence is such  
18 that a reasonable jury could return a verdict for the nonmoving  
19 party," and material facts are those "that might affect the outcome  
20 of the suit under the governing law." Anderson, 477 U.S. at 248.  
21 There is no genuine issue of fact "[w]here the record taken as a  
22 whole could not lead a rational trier of fact to find for the non-  
23 moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,  
24 475 U.S. 574, 587 (1986).

25       It is not the court's task "to scour the record in search of a  
26 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,  
27 1278 (9th Cir. 1996). Counsel has an obligation to lay out their  
28 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d

1 1026, 1031 (9th Cir. 2001). The court "need not examine the entire  
2 file for evidence establishing a genuine issue of fact, where the  
3 evidence is not set forth in the opposition papers with adequate  
4 references so that it could conveniently be found." Id.

### 5 **III. Discussion**

#### 6 A. Plaintiff's Detention

##### 7 1. The Initial Stop

8 Defendants argue first that the Deputy Defendants' initial  
9 decision to detain Plaintiff to cite him for having tinted front  
10 windows did not violate the Fourth Amendment. (Motion at 6.)  
11 Officers may conduct a traffic stop if they have reasonable  
12 suspicion that a person is committing, or is about to commit, a  
13 crime, including a traffic violation. United States v. Choudhry,  
14 461 F.3d 1097, 1100 (9th Cir. 2006). "Reasonable suspicion" must  
15 be informed by specific, articulable facts, along with objective  
16 and reasonable inferences. Id.

17 The California Vehicle Code prohibits driving vehicles with  
18 tinted front side windows. See Cal. Veh. Code § 26708. That  
19 prohibition, however, applies only to vehicles driven upon  
20 highways. See Cal. Veh. Code §§ 360, 24001. While parking places  
21 adjacent to a roadway fall under the definition of "highway,"  
22 parking lots do not. People v. Lopez, 197 Cal.App.3d 93, 99  
23 (1987). In Lopez, police detained the defendant because she was  
24 sitting in a parked vehicle in a public park with what appeared to  
25 be an open container of beer. Id. at 95. California Vehicle Code  
26 section 23223 prohibits the possession of open containers of  
27 alcohol in a motor vehicle upon a highway. Because the parking lot  
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1 in which the defendant did not qualify as a "highway," the court  
2 held that the detention was not justified. Id. at 101.

3 The Deputy Defendants concede that Plaintiff was not violating  
4 any portion of the California Vehicle Code while parked in the  
5 parking lot, but argue that Lopez is distinguishable and that the  
6 initial detention was valid because Plaintiff was about to commit a  
7 violation. (Mot. at 8-9.) Thus, the Deputy Defendants contend,  
8 this case is more like People v. Ellis, 14 Cal.App.4th 1198 (1993).  
9 In Ellis, a police officer detained the defendant for driving in a  
10 parking lot without headlights. Ellis, 14 Cal.App.4th at 1200. In  
11 a brief decision, the court adopted a "commonsense argument" that  
12 officers need not have waited until the defendant entered the  
13 highway to detain him. Id. at 1201. Assuming that California  
14 Vehicle Code section 24400 applied only on highways, the court held  
15 that although the defendant could not have been cited for his  
16 conduct in the parking lot, the detention was nevertheless proper  
17 because a crime was "about to occur" on a public street. Id. at  
18 1202.

19 The Deputy Defendants argue that this case is more like Ellis  
20 than Lopez because Plaintiff's car was not on blocks, attached to a  
21 tow truck, or otherwise obviously inoperable. (Mot. at 8.) Thus,  
22 Defendants argue, there was reason to believe that Plaintiff was  
23 about to commit the crime of driving on a highway with tinted front  
24 windows. This argument is not persuasive. In Ellis, the car at  
25 issue was in motion, "adjacent to Ventura Road." Ellis, 14  
26 Cal.App.4th at 1200. In Lopez, in contrast, and as here, the car  
27 was stopped and parked. Like Plaintiff's car here, the car in  
28 Lopez was not up on blocks or otherwise obviously inoperable. This

1 case, therefore, is more akin to Lopez than to Ellis. Absent any  
2 indication that Plaintiff was about to commit a crime, the Deputy  
3 Defendants' detention of Plaintiffs was not justified.

4 2. The Order to Exit the Vehicle

5 Upon approaching the driver's side of Plaintiff's vehicle, the  
6 Deputy Defendants ordered Plaintiff to exit the vehicle.

7 Defendants contend that this order was lawful because "an officer  
8 may as a matter of course order the driver of a lawfully stopped  
9 car to exit his vehicle . . . ." Maryland v. Wilson, 519 U.S. 408,  
10 410 (1997) (citing Pennsylvania v. Mimms, 434 U.S. 106 (1977) (per  
11 curiam)). That rule, however, is not dispositive here. As  
12 discussed above, officers had not lawfully stopped Plaintiff prior  
13 to ordering him out of his vehicle. Rather, the Deputy Defendants  
14 ordered Plaintiff to exit his vehicle without any reasonable  
15 suspicion that a crime was being committed or was about to be  
16 committed.

17 Defendants also argue, cursorily, that the order to exit the  
18 vehicle was a de minimis intrusion upon Plaintiff's liberty. (Mot.  
19 at 9.) Defendants position, however, is premised upon a misreading  
20 of Mimms. Mimms did not hold that an order to exit a vehicle is  
21 necessarily a de minimis intrusion upon personal liberty, but  
22 rather that it was a de minimis "additional intrusion" upon the  
23 liberty of a driver who had already been lawfully detained. Mimms,  
24 434 U.S. at 114 (emphasis added). The Court explicitly noted that,  
25 absent a prior lawful detention, an officer may not order a driver  
26 out of a car simply because the officer wishes to speak with the  
27 driver. Id. at 114 n.6. Nor does Wilson support Defendants'  
28 apparent contention that an order to exit a vehicle is necessarily



1 de minimis. While Wilson extended Mimms to the passengers of  
2 lawfully stopped vehicles, it did so only due to officer security  
3 concerns created by the presence of passengers. Wilson, 519 U.S.  
4 at 413-14. Neither Wilson nor Mimms supports Defendants' argument  
5 that an order to a parked vehicle's sole occupant to exit the car  
6 is, as a matter of law, a de minimis intrusion. Absent reasonable  
7 suspicion or a prior, lawful traffic stop, Defendants' order that  
8 Plaintiff exit the vehicle violated the Fourth Amendment.

9 B. Qualified Immunity

10 The Deputy Defendants are entitled to qualified immunity, even  
11 in light of constitutional violations, if the right at issue was  
12 not clearly established "at the time of the incident, such that a  
13 reasonable officer would have understood her conduct to be unlawful  
14 in that situation." Green v. City and County of San Francisco, 751  
15 F.3d 1039, 1051-52 (9th Cir. 2014) (internal quotation marks and  
16 citation omitted). Reasonable mistakes of either law, fact, or  
17 both may suffice to trigger qualified immunity. Mattos v. Agarano,  
18 661 F.3d 433, 440 (9th Cir. 2011) (en banc).

19 The Deputy Defendants' actions were reasonable under the  
20 circumstances. As discussed above, the law regarding the  
21 applicability of the California Vehicle Code to conduct on private  
22 property is not particularly well developed.<sup>4</sup> Furthermore, while  
23 there no evidence that Plaintiff was about to enter a highway, the  
24 Deputy Defendants' mistaken belief that Plaintiff was about to  
25 leave the parking lot was not, given the apparent operability of  
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27 <sup>4</sup> While California courts have addressed other parking lot  
28 activity cases, they often have done so only in unpublished,  
uncitable opinions, and with varying results.

1 the car and Plaintiff's position in the driver's seat, not  
2 unreasonable. Qualified immunity is intended "to strike a balance  
3 between the competing need to hold public officials accountable  
4 when they exercise power irresponsibly and the need to shield  
5 officials from harassment, distraction, and liability when they  
6 perform their duties reasonably," and "protects all but the plainly  
7 incompetent or those who knowingly violate the law." Lal v.  
8 California, 746 F.3d 1112, 1116 (9th Cir. 2014) (internal quotation  
9 marks and citations omitted). That balance weighs in favor of  
10 qualified immunity under the circumstances here.

11 C. Malicious Prosecution

12 The filing of a criminal complaint gives rise to a rebuttable  
13 presumption that "the prosecutor filing the complaint exercised  
14 independent judgment in determining that probable cause for an  
15 accused's arrest exists at that time," thus immunizing  
16 investigating officers for damages suffered after the filing of the  
17 complaint. Smiddy v. Varney, 665 F.2d 261, 266 (9th Cir. 1981).  
18 The independent judgment presumption may be overcome by evidence  
19 that a prosecutor relied solely on arresting officers' reports that  
20 omitted crucial information or contained misrepresentations.  
21 Newman v. County of Orange, 457 F.3d 991, 994 (9th Cir. 2006). A  
22 plaintiff's contradictory account of events, however, is not  
23 sufficient to overcome the presumption. Id.

24 Here, Plaintiff argues that the Deputy Defendants' reports  
25 were falsified, as evinced by surveillance footage of Plaintiff's  
26 detention, takedown, and arrest. (Opp. at 13.) The footage at  
27 issue, however, is too unclear to overcome the presumption that the  
28 prosecutor exercised independent judgment. See Smiddy v. Varney,

1 803 F.2d 1469, 1472 (9th Cir. 1986) ("Smiddy II") (requiring  
2 evidence). The surveillance camera was located approximately fifty  
3 feet, or six to seven parking spaces, from the incident.  
4 Plaintiff's vehicle, and much of the altercation, is largely  
5 obscured by two other vehicles, including a full-size van with a  
6 ladder mounted on the roof. Plaintiff's vehicle is itself parked  
7 such that the incident occurred on the far side of the vehicle,  
8 which therefore itself also obstructed the camera's view of all but  
9 the earliest stages of the incident. Furthermore, the quality of  
10 the video is low, with an apparent rate of approximately three  
11 frames per second and no audio. Absent any other evidence that the  
12 Deputy Defendants falsified their report, other than Plaintiffs'  
13 own account of the incident, the Smiddy presumption applies.  
14 Summary judgment is therefore warranted on Plaintiffs' malicious  
15 prosecution claim against the Deputy Defendants.

16 **IV. Conclusion**

17 For the reasons stated above, Defendants' Motion for Summary  
18 Judgment is GRANTED.

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23 IT IS SO ORDERED.

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25  
26 Dated: October 31, 2014



27 DEAN D. PREGERSON  
28 United States District Judge